

APPENDIX J - AMENDMENTS TO THE PRACTICE MANUAL

This appendix presents the substantive amendments to the 2004 Practice Manual for the District of Columbia Voluntary Sentencing Guidelines.

AMENDMENTS

1. **Amendment:** A new Section 1.4, entitled “Use of Sentencing Guidelines Manual in effect on the Date of Sentencing,” is added. This new section states: “The sentencing court shall use the Sentencing Guidelines Manual in effect on the date that the defendant is sentenced. The 2005 Manual is effective on June 14, 2005. The amendments to the 2004 Manual, which are included in the 2005 Manual, are listed in Appendix J.”
2. **Amendment:** Section 1.5.1. (now §1.6.1) is amended by inserting the following after the second sentence: “The Commission will also make changes to the Practice Manual to clarify the sentencing guidelines or to create new policy rules where necessary. See Appendix J, which lists new amendments in the June 14, 2005 Practice Manual.”
3. **Amendment:** Section 1.5.1. (now §1.6.1) is amended by deleting the third sentence and inserting the following: “The Commission strongly encourages questions from criminal justice practitioners concerning the applicable sentencing range or options for individual cases under the Sentencing Guidelines. If you have a Guidelines application inquiry, please contact us at (202) 727-8822. The Commission provides information to assist in understanding and applying the Sentencing Guidelines. The information provided is not binding on the court or parties in any case. However, the issues raised by the inquiry may be used to inform subsequent revisions of the Practice Manual.”
4. **Amendment:** Section 2.1 is amended by adding the following sentence after the third sentence: “Appendix C-I is a chart that has all of the felonies that may be prosecuted in the District of Columbia arranged by D.C. Official Code (2001) cite.”
5. **Amendment:** Section 2.1 is amended by adding the following after the fourth paragraph: “Note: For accessory after the fact convictions, the top and bottom of the applicable guideline range for the underlying offense is reduced by one half. See Appendix C and C-I.”
6. **Amendment:** Section 2.2.2. is amended by deleting the first sentence in the second paragraph and replacing it with: “Out-of-state and federal convictions and

adjudications should be matched as closely as possible to D.C. Official Code offenses by following the rules in section 2.2.6.”

7. **Amendment:** Section 2.2.2 is amended by inserting the following before the “Note” regarding YRA sentences:

Note: When scoring prior convictions for accessory after the fact, score as follows when the underlying offense falls into the following boxes:

groups 1-3: 3 points
groups 4-5: 2 points
groups 6-9: 1 point

8. **Amendment:** Section 2.2.3 is amended by deleting the second sentence of the third paragraph and replacing it with: “If any prior felony conviction or any part of its sentence (including incarceration, probation, parole or supervised release) occurred within the ten-year window, then all lapsed felony convictions are revived.”
9. **Amendment:** Section 2.2.3 is amended by deleting the last sentence of the fifth paragraph, which currently states “Only felony convictions within the 10-year window can revive earlier felony convictions.” In lieu of this sentence, the following sentence is inserted: “A prior felony conviction can revive an earlier felony conviction only if the more recent conviction or any part of its sentence (including incarceration, probation, parole or supervised release) occurred within the 10-year window. See Section 7.27.”
10. **Amendment:** Section 2.2.6 is amended by deleting the entire section and replacing it with:

Convictions and adjudications for federal and out-of-state offenses are scored like the closest comparable D.C. Official Code offenses. To determine the closest comparable D.C. Official Code offense:

1. Look at the name of the offense;
2. Examine the statutory elements of the offense;
3. Choose the DC offense that most closely matches the out-of-state offense. Score the out-of-state offense for criminal history purposes just as the most closely matched DC offense would be scored (for example, an out-of-state offense that most closely matches ADW is scored as 2 points, just as is a prior DC ADW conviction).
4. If there are more than one possible DC statutes that "closely match" the out-of-state offense, select the least severe DC statute, whether that statute is a misdemeanor or a lesser felony. (In some cases, the

least severe DC statute might actually be a felony even if the out-of-state offense is a misdemeanor. What is most important is how DC classifies the statute.) Importantly, do not look to the underlying conduct of the prior offense to select the offense that most closely matches; instead compare the elements of the DC and out-of-state offenses.

5. If no comparable DC statute can be found based on the above rules, then the following default rules apply:

- a. Apply one point for all convictions that are classified as felonies by the other jurisdiction;
- b. Apply $\frac{1}{2}$ point for all juvenile adjudications that are classified as felonies by the other jurisdiction;
- c. Apply $\frac{1}{4}$ point for all convictions that are classified as misdemeanors by the other jurisdiction.
- d. Exception: If defense counsel can demonstrate to the sentencing Court that the conduct criminalized by the other jurisdiction is not currently classified as criminal conduct in DC, then the Court may delete or remove any criminal history points applied by CSOSA for such an offense.

Note: The same lapse rules apply to out-of state convictions as to D.C. convictions. Thus, a revived out-of-state felony should be scored as $\frac{1}{2}$ point under these default rules, and misdemeanor convictions and juvenile adjudications would not be scored at all

6. If the government determines that the criminal history score for the out-of-state conviction under-represents the severity of the offense, then the government may seek a criminal history departure. This departure principle applies only to out-of-state convictions. If the Court concludes by a preponderance of evidence that the underlying conduct for the out-of state conviction most closely matches a more severe DC offense, then the Court may adjust the criminal history score by applying the same number of criminal history points applicable to the more severe DC offense. In making this determination, the burden of proof is on the government to establish that the conduct for the out-of state conviction more closely matches a more severe DC offense. The Court should apply this departure principle only if it determines that the conduct of conviction, as opposed to alleged conduct or conduct relating to other offenses, more closely matches the more severe DC offense.

While the parties may not normally bargain over the criminal history score, the parties may agree that the Court should apply a higher and specific value of points as the appropriate score for an out-of state conviction. This

would help create certainty at the time of a plea and would reduce resources necessary to litigate the appropriate criminal history score when it is contested. If agreed upon by the parties, CSOSA and the Court should accept this score when calculating criminal history. This exception to the general rule prohibiting bargaining over criminal history score applies only to out-of-state convictions and is the **ONLY EXCEPTION** to the general prohibition.

Note: In rare cases, the sentence the court imposed may assist us in determining the applicable statute of conviction—in the foreign jurisdiction. For example, in North Carolina, "breaking and entering" includes both a misdemeanor (simple breaking or entering) and a felony (intent to commit any felony or larceny). If a defendant has a prior conviction for "breaking or entering" in North Carolina, and received a 5-year sentence for that conviction, the prior conviction must be a felony since the maximum penalty for the misdemeanor is 120 days for persons with an extensive criminal history.

Note: Figuring out exactly which D.C. offense most closely resembles an out-of-state offense may not be necessary if the number of criminal history points assigned to it would be the same regardless of whether it comes closer to one offense or another.

Note: Figuring out the exact number of criminal history points is not necessary where a defendant has six or more points (e.g., two prior violent felonies; three prior mid-level felonies; six prior low-level felonies or a combination of these and misdemeanors that add up to six or more points).

The Commission has developed a preliminary list of common Maryland offenses that are comparable to D.C. offenses. This list is available at www.sentencing.dc.gov. In the coming months, the Commission will work on comparing additional Maryland, Virginia and Federal offenses to D.C. offenses. It will then work on comparability for common offenses in other jurisdictions. In the meantime, the Commission strongly urges practitioners and judges to call for assistance regarding comparability of specific offenses. Such a call is likely to be more efficient than trying to decide comparability at the time of sentencing in a given case.

- 11. Amendment:** A new Section 2.2.8 is inserted, which is entitled "Scoring Convictions/Adjudications for Offenses Where Sentencing Severity has Changed Since the Commission of the Prior Offense." This new section states:

Convictions and adjudications for offenses that were classified as misdemeanors when the prior offense occurred but were subsequently reclassified as felonies should be scored as misdemeanors. For example, distribution of marijuana was a misdemeanor until June 8, 2001, when it was reclassified as a felony in some circumstances. Any distribution of

marijuana conviction for an offense committed before June 8, 2001, therefore, should be scored as a misdemeanor.

Following this section, a footnote is inserted that states:

Distribution of marijuana was a misdemeanor under all circumstances before June 8, 2001, when it was reclassified as a felony unless the defendant has not been previously convicted of distributing or possessing with intent to distribute any controlled substances and the amount of marijuana was ½ pound or less. D.C. Official Code § 48-904.01(a)(2)((B). Carrying a pistol without a license was a misdemeanor before August 20, 1994, unless the person had previously been convicted of CPWL or of any felony. Since then, it has also been a felony to carry a pistol outside a person's home or place of business or on land possessed by the person. D.C. Official Code § 22-4504. An attempt to commit a crime of violence was a misdemeanor before August 20, 1994, when it was reclassified as a 5-year felony. D.C. Official Code § 22-1803. Attempt robbery, however, has been classified as a 3-year felony since the Code was enacted in 1901. D.C. Official Code § 22-2802.

- 12. Amendment:** A new Section 2.2.10, entitled "Military and Foreign Convictions," is inserted. This new section states: "Convictions resulting from military offenses are scored if imposed by a general or special court martial. Convictions imposed by a summary court martial or Article 15 proceeding are not scored. Convictions resulting from a foreign conviction are not scored."
- 13. Amendment:** A new Section 2.2.11 is inserted, which is entitled "Convictions for Traffic Offenses." This new section states: "Convictions for traffic offenses are not scored. However, convictions for Negligent (Vehicular) Homicide, D.C. Official Code § 50-2203.01, and Fleeing Law Enforcement, D.C. Official Code 50-2201.05, are criminal offenses and are scored. See Appendix C and C-I."
- 14. Amendment:** Page 4-1 is amended by inserting the following prior to the last paragraph: "The court should apply only one of two or more enhancements. In such a case, the court may, but need not, select the enhancement that raises the top of the range by the greatest percentage."
- 15. Amendment:** Page 4-1 is amended by inserting the following after the last paragraph: "A conviction for accessory after the fact reduces by one-half both the top and the bottom of the prison range available in the box applicable to the underlying offense."

- 16. Amendment:** Page C-3 is amended by adding Attempt Crime of Violence While Armed. The offense severity group for this offense is “Same group as unarmed completed offense.”
- 17. Amendment:** Page C-3 is amended by changing the offense severity group for assault with intent to commit any other felony from Master Group 6 to Master Group 8.
- 18. Amendment:** Page C-3 is amended by adding Assault with Intent to Commit Mayhem as Master Group 7.
- 19. Amendment:** Page C-4 is amended by dividing Burglary while armed into first degree burglary while armed (Master Group 3) and second degree burglary while armed (Master Group 6).
- 20. Amendment:** Page C-6 is amended by adding Cruelty to Animals as Master Group 9.
- 21. Amendment:** Page C-8 is amended by adding Fleeing Law Enforcement as Master Group 8.
- 22. Amendment:** Page C-9 is amended by adding Illegal Dumping as Master Group 9.
- 23. Amendment:** Page C-9 is amended by adding Identity Theft as Master Group 8.
- 24. Amendment:** Page C-12 is amended by adding Possession of Unregistered Firearm, Second Offense as Master Group 9.
- 25. Amendment:** Page C-17 is amended by inserting Taxicab Driver enhancement.